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THIRD CONFERENCE ON THE LAW OF THE SEA



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ORIGINAL: ENGLISH

Second Committee

Denmark and Finland: amendment to draft articles on the territorial sea and straits contained in document A/CONF.62/C.2/L.3

On page 8, Chapter Three, amend Article 1 as follows:

Article 1

1. In straits to which this article applies, all ships and aircraft enjoy the right of transit passage, which shall not be impeded.
2. Transit passage is the exercise in accordance with the provisions of this Chapter of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas or a State bordering the strait.
3. This article applies to any strait or other stretch of water which is more than six miles wide between the base-lines, whatever its geographical name, which:
 - (a) is used for international navigation;
 - (b) connects two parts of the high seas.
4. Transit passage shall apply in a strait only to the extent that:
 - (a) an equally suitable high seas route does not exist through the strait; or
 - (b) if the strait is formed by an island of the coastal State, an equally suitable high seas passage does not exist seaward of the island.
5. The provisions of Chapter Two, Part III apply to straits used for international navigation not wider than six miles between the base-lines.

There shall be no suspension of innocent passage of foreign ships through such straits.



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Oman: Draft articles on navigation through the
territorial sea, including straits used for
international navigation

(Items 2.4 and 4 of the list)

Part I

Right of innocent passage through the territorial sea

Section 1. Rules applicable to all ships

Article 1. Right of innocent passage

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Article 2. Passage

1. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port in the coastal State or its internal waters, or of proceeding to any port in the coastal State or its internal waters from the high seas, or of making for the high seas from any port in the coastal State or its internal waters.
2. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.
3. Passage shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily, hovering or engaging in any activity other than mere passage.
4. Passage through archipelagic waters shall be governed by the provisions of Chapter ... of this Convention.

Article 3. Innocence of passage

1. Passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

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2. Passage of a foreign ship shall not be considered prejudicial to the peace, good order or security of the coastal State unless it engages in the territorial sea in activities such as:

- (a) any warlike act against the coastal or any other State or any threat or use of force;
- (b) any exercise or practice with weapons of any kind;
- (c) the launching or taking on board any device;
- (d) the launching, landing or taking on board of any aircraft;
- (e) the embarking or disembarking of any person or cargo;
- (f) any act of propaganda affecting the defence or security of the coastal State;
- (g) any act of espionage or collecting of information affecting the defence or security of the coastal State;
- (h) any act of interference with any system of communications of the coastal State;
- (i) any act of interference with any other facilities or installations of the coastal State;
- (j) the carrying out of research operation of any kind.

3. Submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

4. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

5. The provisions of this article shall not apply to any activities carried out with the prior authorization of the coastal State or as are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons or vessels in danger or distress.

Article 4. Duties of coastal States

1. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.

2. The coastal State is required to give appropriate publicity to any obstacles or dangers to navigation, of which it has knowledge, within the territorial sea.

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3. The coastal State is required to give appropriate publicity to the existence in its territorial sea of any facilities or systems of aid to navigation and of any facilities to explore and exploit marine resources which could be an obstacle to navigation, and to install in a permanent way the necessary marks to warn navigation of the existence of such facilities and systems.

4. In order to expedite the passage of ships through the territorial sea, the coastal State shall ensure that the procedures for notification provided for in these articles shall be such as not to cause undue delay.

Article 5. Rights of coastal States

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to any port in the coastal State or its internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to such ports or waters is subject.

3. Subject to the provisions of part II of this chapter, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

4. The coastal State may require any foreign ship that does not comply with the provisions concerning regulation of navigation through the territorial sea to leave it by such route as may be directed by the coastal State.

Article 6. Regulation of navigation through the territorial sea

1. The coastal State may make laws and regulations, in conformity with the provisions of these articles and other rules of international law, relating to navigation through its territorial sea.

2. Such laws and regulations may be in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic and transport, including the establishment of sealanes and traffic separation schemes, in accordance with article 7;

(b) the installation, utilization and protection of navigational facilities and aids;

(c) the installation, utilization and protection of facilities, structures and devices for the exploration and exploitation of the living and non-living resources of the territorial sea;

(d) the installation, utilization and protection of submarine or aerial cables and pipelines;

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(e) the preservation of the marine environment of the coastal State and the prevention of pollution thereto;

(f) research into the marine environment, including hydrographic surveying;

(g) prevention of infringement of the custom, fiscal, immigration or sanitary regulations of the coastal State;

(h) passage of ships with special characteristics, in accordance with Article 8.

3. The coastal State shall give due publicity to all laws and regulations made under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State.

5. The coastal State shall ensure that the application, in form and in fact, of its laws and regulations upon foreign ships exercising the right of innocent passage is in conformity with the provisions of this Convention

Article 7. Se lanes and traffic separation schemes

1. The coastal State may designate in its territorial sea se lanes and traffic separation schemes and prescribe the use of such se lanes and traffic separation schemes as compulsory for passing ships.

2. In the designation of se lanes and traffic separation schemes, the coastal State shall take into account:

(a) the recommendations of competent international organizations;

(b) any channels customarily used for international navigation;

(c) the special characteristics of particular channels and the special characteristics of particular ships.

3. The coastal State shall clearly indicate all se lanes and traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

4. The coastal State may, after giving due publicity thereto, substitute se lanes for any se lanes previously designated by it or modify the traffic separation schemes also designated by it.

5. Foreign ships shall respect applicable se lanes and traffic separation schemes established in accordance with this article.

6. Foreign ships passing through se lanes and traffic separation schemes shall comply with appropriate rules to prevent collision at sea, and take into account instructions received from installations and systems of aids to navigation of the coastal State.

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Article 8. Navigation of ships with special characteristics

1. The coastal State may regulate the passage through its territorial sea of the following:

- (a) nuclear-powered ships or ships carrying nuclear weapons;
- (b) marine research and hydrographic survey ships;
- (c) oil tankers and chemical tankers carrying harmful or noxious liquid substances in bulk;
- (d) ships carrying nuclear substances or materials.

2. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign ships mentioned in subparagraph (a) of paragraph 1.

3. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea, except along designated sealanes, of foreign ships mentioned in subparagraph (b) of paragraph 1.

4. The coastal State may require the passage through its territorial sea along designated sealanes of foreign ships mentioned in subparagraphs (c) and (d) of paragraph 1, in conformity with article 7.

Article 9. Liability

1. If a ship exercising the right of innocent passage does not comply with laws and regulations concerning navigation and any damage is caused to the coastal State, the coastal State shall be entitled to compensation for such damage.

2. If a coastal State acts in a manner contrary to the provisions of these articles and loss or damage to a foreign ship results, the coastal State shall compensate the owners of the ship for that loss or damage.

Section II. Rules applicable to merchant ships

Article 10. Charges

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered. These charges shall be levied without discrimination.

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Article 11. Criminal jurisdiction

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State; or
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
- (c) if the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
- (d) if it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its law for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving a port or the internal waters.

3. In the cases provided for in paragraphs 1 and 2 of these articles, the coastal State shall, if the captain so requests, advise the consular authority of the country whose flag the ship flies, before taking any steps, and shall facilitate contacts between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall take due regard to the interests of navigation.

5. The coastal State may not take steps on board a foreign ship passing the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from any port, is only passing through the territorial sea without entering internal waters.

Article 12. Civil jurisdiction

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course, or for the purpose, of its passage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

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Section III. Rules applicable to government ships

Sub-section A. Government ships other than warships

Article 13. Government ships operated for commercial purposes

The rules contained in Section I and II of these articles shall apply to government ships operated for commercial purposes.

Article 14. Government ships operated for non-commercial purposes

1. The rules contained in articles 1 to 8 and article 10 shall apply to government ships operated for non-commercial purposes.
2. Subject to the provisions of paragraph 1 of this article, nothing in these articles affects the immunities which such ships enjoy under the provisions of these articles or other rules of international law.

Sub-section B. Warships

Article 15. Passage of warships

1. The rules contained in articles 1 to 8 shall apply to warships.
2. For the purpose of these articles, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the appropriate service list or its equivalent, and manned by a crew who are under regular armed forces discipline.
3. The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with the regulations in force in such a State.

Article 16. Designated searoutes

Foreign warships exercising the right of innocent passage may be required to pass through certain searoutes as may be designated for this purpose by the coastal State.

Article 17. Non-compliance with laws and regulations of the coastal State

If any warship does not comply with the law and regulations of the coastal State made in accordance with this Convention relating to the passage through the territorial sea or fails to comply with the requirements of these articles and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require the warship to leave the territorial sea by such route as may be directed by the coastal State.

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Article 18. Immunities

With such exceptions as are contained in these articles, nothing in the Convention affects the immunities which warships enjoy under the provisions of these articles or other rules of international law.

Sub-section C: State responsibility for government ships

Article 19. State responsibility for government ships

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws and regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State, including its environment and any of its facilities, installations or other property, or to any ship flying its flag, international responsibility shall be borne by the flag State of the ship causing such damage.

Part II

Right of innocent passage through straits used for international navigation

Article 20. Straits

These articles apply to any strait which is used for international navigation and forms part of the territorial sea of one or more States.

Article 21. Right of innocent passage

Subject to the provisions of article 22, the passage of foreign ships through straits shall be governed by the rules contained in part I of this chapter.

Article 22. Special duties of coastal States

1. Passage of foreign merchant ships through straits shall be presumed to be innocent.
2. There shall be no suspension of the innocent passage of foreign ships through straits.
3. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea in straits and shall make every effort to ensure speedy and expeditious passage; in particular it shall not discriminate, in form or in fact, against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.
4. The coastal State shall not place in navigational channels in a strait facilities, structures or devices of any kind which could hamper or obstruct the passage of ships through such strait. The coastal State is required to give appropriate publicity to any obstacle or danger to navigation, of which it has knowledge, within the strait.

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Article 23. Special rights of coastal States

The coastal State may require the co-operation of interested States and appropriate international organizations for the establishment and maintenance of navigational facilities and aids in a strait.
